

SETTLEMENT AGREEMENT

A. PARTIES

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS") (collectively the "United States"); and James R. Andrews, M.D. ("Andrews") (the United States and Andrews will hereafter be referred to as the "Parties"), through their authorized representatives.

B. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

1. James R. Andrews, M.D. is a physician practicing in Birmingham, Alabama. The United States contends that Andrews submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh.
2. The conduct described in this paragraph will be referred to as the "Covered Conduct." The United States contends that it has certain civil claims against Andrews for claims submitted from January 1, 2003 to June 30, 2003 to Medicare by HealthSouth Corporation, an entity with whom Andrews had a financial relationship that violated the physician self-referral law, known as "Stark," 42 U.S.C. § 1395nn et seq., and/or the Anti-Kickback Statute more specifically described as follows: HealthSouth entered into the following Medical Direction Agreements and informal agreements to pay Andrews for medical direction at the HealthSouth Rehabilitation Center of Birmingham, HealthSouth Medical Center, and for the corporation as a

whole, in part in order to ensure patient referrals from Andrews to those and other HealthSouth facilities:

- a) the May 1, 1988 Medical Direction Agreement between HealthSouth Rehabilitation Center of Birmingham, Ltd, and James R. Andrews, M.D. which was in effect until June 30, 2003;
- b) the 1999 Medical Direction Agreement and a prior agreement; and
- c) the July 1, 1988 Corporate Medical Director Agreement between HealthSouth Rehabilitation Corporation and James R. Andrews, M.D. which was in effect through June 30, 2003; and
- d) an agreement made in or about November 1991 for corporate level development assistance.

3. The United States contends also that it has certain administrative claims against Andrews for engaging in the Covered Conduct, as specified in Article C, Paragraph 3, below.

4. This Agreement is neither an admission of liability by Andrews nor a concession by the United States that its claims are not well founded.

5. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

C. TERMS AND CONDITIONS

1. Payment. Andrews agrees to pay to the United States \$450,000 (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the

United States. The Settlement Amount shall be paid through two electronic funds transfers of \$225,000 each. The first payment will be made no later than the Effective Date of this Agreement. The second payment shall be made not later than April 30, 2008. In the event that Andrews does not pay the second payment on or before January 15, 2008, the outstanding balance shall accrue interest at the Medicare Trust Funds Rate (currently 4.75% APR) beginning on January 15, 2008 and the date on which the second payment is received by the United States.

2. Release of Andrews by the United States. Subject to the exceptions in Paragraph 4. below, in consideration of the obligations of Andrews set forth in this Agreement, conditioned upon Andrews's full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Andrews from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Stark Law, 42 U.S.C. § 1395nn(g)(3); the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud, for the Covered Conduct.

3. Express Reservation by OIG-HHS. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Andrews, and/or its officers, directors, and employee from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1230a-7(b) (permissive exclusion).

4. Exceptions to Releases. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Andrews) are the following:

a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any liability based upon such obligations as are created by this Agreement;

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and

g. Any liability for failure to deliver goods or services due.

5. Double Jeopardy, Excessive Fines and No Characterization for Tax Purposes. Andrews waives and will not assert any defenses Andrews may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by

the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Andrews's Release of the United States. Andrews fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Andrews has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Denied Claims. The Settlement Amount will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any state payer, related to the Covered Conduct; and Andrews agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

8. Andrews's Cooperation With the United States.. Andrews agrees to cooperate, upon reasonable request, and provide truthful information with any investigation by the United States of individuals and entities not released in this Agreement, for the Covered Conduct and related transactions. Andrews agrees to furnish to the United States, upon reasonable request, all nonprivileged documents and records in its possession, custody, or control relating to the Covered Conduct.

9. Agreement for the Benefit of Parties Only. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Article C, Paragraph 10, below.

10. No Offsets from Beneficiaries. Andrews waives and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. Costs. Each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Voluntary Agreement. Andrews represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. Governing Law. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the Northern District of Alabama.

14. Entire Agreement. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. Capacity to Execute. The individuals signing this Agreement on behalf of Andrews represent and warrant that they are authorized by Andrews to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

16. Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. Successors. This Agreement is binding on Andrews's successors, transferees, heirs, and assigns.

18. Disclosure of Agreement. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. Effect on Tolling Agreement. All parties agree that the Tolling Agreement dated May 10, 2007 (along with all extensions to such agreement) between the United States and Andrews shall be deemed to be voluntarily rescinded upon payment of the Settlement Amount described in Article C, Paragraph 1, above.

20. Effective Date. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures will constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/14/07

BY: 

LEOYD C. PEEPLES, III
Assistant United States Attorney
Northern District of Alabama

DATED: 12/14/07

BY: 

GREGORY E. DEMSKE
Assistant Inspector General for
Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

James R. Andrews, M.D. - DEFENDANT

DATED: 12/13/07

BY: James R. Andrews M.D.
James R. Andrews, M.D.

DATED: 12-13-07

BY: Gus Gunt
Counsel for James R. Andrews, M.D.

DATED: 12/13/07

BY: [Signature]
Counsel for James R. Andrews, M.D.